

STATE REPORTER
OF
EDUCATION LAW

VOLUME 8

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

SPECIAL SERVICES EDUCATION
ASSOCIATION, MEA/NEA,

Appellant,

v.

No. OSPI 130-87

Decided: Mar. 31, 1989

YELLOWSTONE/WEST CARBON COUNTY
SPECIAL SERVICES COOPERATIVE,

Respondent.

Findings of Fact, Conclusions of Law and Order, and Memorandum Opinion
by Nancy Keenan, State Superintendent

Appeal from the Yellowstone County Superintendent of Schools.

POLICIES--COLLECTIVE BARGAINING, Remand to determine when the
cooperative submitted the revised mileage reimbursement policy to the
staff "meet and confer" committee.

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This matter is an appeal before the Superintendent of Public Instruction from the Findings of Fact, Conclusions of Law and Order of the Yellowstone County Superintendent of Schools, dated June 11, 1987.

The State Superintendent of Public Instruction has jurisdiction of this controversy under Section 20-3-107, MCA and 10.6.121 ARM. The standard of review in an appeal of a decision of the County Superintendent is set forth in 10.6.125 ARM.

Appellant, the Special Services Education Association (herein the Association), raises the following issues in paragraph 15 of the appeal:

(These are being specified pursuant to 10.6.125(4)(a)(b)(c)(d)(e), ARM.

More specifically, the following errors appear:

"(a) The hearing examiner's Conclusion of law #3 is that state law does not mandate mileage reimbursement for public employees. Such conclusion is incorrect as either a Finding of Fact or Conclusion of Law. Sections 20-18-501 and 2-18-503, MCA require mileage reimbursement for public employees at a rate equal to the amount allowed by the IRS, currently twenty-one cents (21 cents) per mile.

"(b) The hearing examiner, in Finding of Fact #6, found there had been 'meet and confer' discussion over the changed policy. There was no such discussion and the record is devoid of any evidence of such discussion.

"(c) Conclusion of Law #5 is also in error as there was no 'meet and confer' and no contemplation that unilateral changes in mileage were to be made.

"(d) No finding was made on the inequitable application of the policy to individual employees.

"(e) No finding was made on the cuts in net compensation which have resulted from application of the new policy."

The State Superintendent deemed this matter submitted on briefs. Neither party requested oral argument.

Having reviewed the record pursuant to 110.6.118 ARM, and the briefs submitted in this matter, this State Superintendent now enters her:

CONCLUSIONS OF LAW

1. That Finding of Fact No. 6 is incomplete, it does not state when the revised mileage reimbursement policy was submitted to the "meet and confer" committee.

2. That Conclusions of Law Nos. 3 and 5 of the County Superintendent are supported by reliable, probative, and substantial

evidence on the whole record. They are not affected by error of law. They are not in violation of Statutory provisions.

3. That the Association did not submit proposed findings of fact to the County Superintendent. Therefore, it cannot challenge the decision of the County Superintendent on the basis that findings of fact on issues essential to the decision were not made although requested.

Based on the foregoing, Conclusions of Law, this State Superintendent now enters her:

ORDER

This Superintendent of Public Instruction remands these Findings of Fact, Conclusions of Law and Order to Donald L. Bidwell acting for the Yellowstone County Superintendent in this matter with instructions to: (1) decide when the cooperative submitted the revised mileage reimbursement policy, R-2, to the staff "meet and confer" committee; and (2) apply Conclusion of Law No. 5 to the facts as found and issue an appropriate order.

MEMORANDUM OPINION

Background

The Special Services Education Association was certified as the exclusive collective bargaining representative for the staff of the Cooperative on October 29, 1986. Prior to that date, the staff members of the Cooperative were not represented by a collective bargaining agent.

On August 18, 1986, the Cooperative announced a revised employee mileage reimbursement policy. On August 29, 1986, the staff filed a grievance challenging the policy revision. The staff moved this grievance through the level of the County Superintendent. They did not appeal the November 25, 1986 decision of the County Superintendent.

The Association filed a new grievance challenging the Cooperative's unilateral adoption of the revised mileage reimbursement policy with the Director of the Cooperative on December 8, 1986, contending that it was a continuing violation of the "meet and confer" policy adopted by the Cooperative Board. The grievance filed on December 8, 1986 is before the Superintendent of Public Instruction on appeal from the decision of the County Superintendent.

Finding of Fact No. 6

The Cooperative contends that Mr. Christiansen's testimony supports Finding of Fact No. 6. The Association's reply brief contends that Mr. Christiansen's testimony about the "meet and confer" discussions on the travel policy refers to discussions on August 22, 1986 after the policy was adopted and employees were trying to get it changed, not prior to its unilateral adoption. It is this Superintendent's opinion Mr. Christiansen's testimony does not support either of the above contentions. However, Vern Barkell testified he discussed the R-2 policy with the Cooperative staff at a PIR day.

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This PIR day may have been the August 22, 1986 meeting to which the Association refers in its reply brief.

The County Superintendent's Conclusion of Law No. 5 states: "That mileage reimbursement for this Cooperative was based upon a policy manual which was subject to amendment at will following "meet and confer". Therefore the contract contemplated such amendments which allowed for changes in compensation." (Emphasis added). This Conclusion of Law requires that the County Superintendent find as a fact when the R-2 policy was submitted to meet and confer.

Conclusion of Law No. 3

The Association contends that Montana law mandates that the Cooperative employees be reimbursed for mileage driven in their personal automobiles. The Association relies on Section 2-18-501, MCA. This section specifically refers to "state employees" as distinguished from city, county, or other government employees. The Attorney General discusses the application of Section 2-18-501 to other than "state" employees in 40 A.G. Op. 77 (1984).

The Association also references Section 2-18-503, MCA. The language in 503 includes the Cooperative's employees by use of the language that "other persons who may be entitled to mileage paid from public funds, when using their own automobiles in the performance of official duties" This section sets the rate to be paid but it does not require reimbursement.

Conclusion

Given that none of the Findings of Fact of the County Superintendent state when the revised mileage reimbursement policy was submitted to the "meet and confer" committee; and that Conclusion of Law No. 5 requires the Cooperative Board to submit a proposed revision of the mileage reimbursement policy to "meet and confer" prior to adoption as policy by the Cooperative Board, this State Superintendent of Public Instruction remands the Findings of Fact, Conclusions of Law and ORDER to the County Superintendent with instructions.

DATED this 31st day of March, 1989.

s/Nancy Keenan
State Superintendent